

# EXHIBIT 2

**Jacob, Johanna**

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**From:** Randall Garteiser <rgarteiser@ghiplaw.com>  
**Sent:** Friday, April 24, 2015 12:27 PM  
**To:** Caridis, Alyssa  
**Cc:** <bluespike@ghiplaw.com>; AudibleMagic-BlueSpike; Walter Lackey; Eric Findlay  
**Subject:** Re: Blue Spike v Audible Magic -- MSJ Page Limits

Blue Spike disagrees, and as is normally the case in a world where emails fly at a rate of 100 plus a day, it maintains it's position that no response to any email from a notorious serial infringer client like Audible Magic, is in no way ever an admission of anything.

On Apr 24, 2015, at 1:28 PM, "Caridis, Alyssa" <[acaridis@orrick.com](mailto:acaridis@orrick.com)> wrote:

Randall –

Thank you for confirming your position. We will go ahead and get our brief on file. Just so that the parties understand each other, can you please let us know how many pages Blue Spike believes it has to file an opposition? If we don't hear otherwise from you, we'll assume you agree with the page counts I've detailed extensively below (for Blue Spike) and will expect Blue Spike's opposition to total 1 to 2 pages.

Regards,  
Alyssa

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**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]  
**Sent:** Friday, April 24, 2015 10:57 AM  
**To:** Caridis, Alyssa  
**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike; Walter Lackey; Eric Findlay  
**Subject:** Re: Blue Spike v Audible Magic -- MSJ Page Limits

Blue Spike will not agree to your client's math, and reserves its rights. We will not stipulate in any way to increasing the page limits Audible Magic has for filing MSJs.

On Apr 24, 2015, at 10:13 AM, "Caridis, Alyssa" <[acaridis@orrick.com](mailto:acaridis@orrick.com)> wrote:

Randall –

Have you had a chance to consider Blue Spike's position in light of the below? Please advise.

Regards,  
Alyssa

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**From:** Caridis, Alyssa  
**Sent:** Thursday, April 23, 2015 8:53 AM  
**To:** Randall Garteiser  
**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike; Walter Lackey; Eric Findlay  
**Subject:** RE: Blue Spike v Audible Magic -- MSJ Page Limits

As I previously mentioned in the first e-mail of this chain:

Specifically, Audible Magic's opening brief on its License MSJ totaled 20 pages (Dkt. 1678) and its opening brief on the Indefiniteness motion totaled 27 pages (Dkt. 1752). This brings Audible Magic to a total of 47 (out of 60) pages for opening MSJ briefs.

Accordingly, Audible Magic has 13 pages left under the allotment of Local Rule 7(a)(3). [Although I will note that my previous count of 20 pages for Dkt. 1678 included the "Rule 56(a)(1) Statement." So if the parties are not counting the statement of issues towards page limits (as stated in my e-mail below for Blue Spike's opposition), that would mean Audible Magic has 14 pages. *Compare* Dkt. 1678 at iii *with* Dkt. 1730 at 4.]

I am available to discuss if it would be helpful.

Alyssa

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**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]  
**Sent:** Thursday, April 23, 2015 8:41 AM  
**To:** Caridis, Alyssa  
**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike; Walter Lackey; Eric Findlay  
**Subject:** Re: Blue Spike v Audible Magic -- MSJ Page Limits

How many pages does Audible Magic contend it has to file another, third, MSJ?

On Apr 23, 2015, at 10:05 AM, "Caridis, Alyssa" <[acaridis@orrick.com](mailto:acaridis@orrick.com)> wrote:

Randall –

I'm sorry, but I don't quite follow your e-mail – what math do you disagree with?

Attached is Blue Spike's Opposition to the License Motion (Dkt. 1730). Even excluding the restatement of issues (page 4), the page count of this document is 24 pages. The statement of disputed facts that Blue Spike filed with this motion totaled 14 pages. However, last October, Mr. Brasher indicated that Blue Spike could reformat its statement to reduce it down to nine pages, and provided a reformatted Exhibit A, which I also attach.  $24 + 9 = 33$ .

Attached is Blue Spike's Opposition to the Indefiniteness motion (Dkt. 1785). This document totals 28 pages.

$33 + 28 = 61$ .

There can be no dispute that 1) local rule 7(a)(3) limits a party's opposition MSJ briefing to 60 pages, 2) statements of disputed (and

undisputed) facts count towards this page limit, and 3) 61 is greater than 60.

Please explain what exactly Blue Spike disagrees with. Again, I reiterate that Audible Magic still is well under its limit on its pages for opening MSJ briefs (as set forth below). Blue Spike has no pages to oppose any motion. (Although, as a gesture of good faith, we were willing to give Blue Spike the benefit of the doubt that it might be able to reduce the page count of its Exhibit A (to Dkt. 1730) further with additional reformatting as I noted below.) Audible Magic is fine proceeding with these page limits. But if Blue Spike intends to file an opposition of more than 1 or 2 pages, than the parties must enter a stipulation now or Blue Spike must provide its basis for why it is entitled to more pages.

We are trying to avoid disputes before the Court down the road regarding page limits. Please provide a response by close of business today so that we may understand Blue Spike's position.

Alyssa

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**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]  
**Sent:** Wednesday, April 22, 2015 7:42 PM  
**To:** Caridis, Alyssa  
**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike; Walter Lackey; Eric Findlay  
**Subject:** Re: Blue Spike v Audible Magic -- MSJ Page Limits

We are not going to agree to provide audible magic more pages and disagree with your math, but we will let Audible Magic know we they are over the page limit.

Be well,  
Randall

On Apr 22, 2015, at 8:45 PM, "Caridis, Alyssa" <[acaridis@orrick.com](mailto:acaridis@orrick.com)> wrote:

Randall,

We have yet to receive a response to my inquiry about page limits (see below). If we do not hear from you by close of business tomorrow, we will move forward with the understanding that Blue Spike is content with being limited to 2 pages for its opposition (and we will note as much in our opening brief).

Alyssa

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**From:** Caridis, Alyssa  
**Sent:** Monday, April 20, 2015 11:01 AM

**To:** Randall Garteiser; <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>  
**Cc:** AudibleMagic-BlueSpike; Walter Lackey; Eric Findlay  
**Subject:** Blue Spike v Audible Magic -- MSJ Page Limits

Mr. Garteiser,

As you are aware, the Court granted Audible Magic's request to file a summary judgment motion for noninfringement last week. As you also know, the Eastern District of Texas imposes total page limits on all briefs relating to summary judgment motions. Specifically, Rule 7(a)(3) sets the following limits:

Brief	Total Pages
Opening MSJ	60
Opposition to MSJ	60
Reply to MSJ	20
Sur-Reply to MSJ	20

A large portion of the above-allotted page limits were already used last year in connection with Audible Magic's motions regarding indefiniteness and its license defense. Specifically, Audible Magic's opening brief on its License MSJ totaled 20 pages (Dkt. 1678) and its opening brief on the Indefiniteness motion totaled 27 pages (Dkt. 1752). This brings Audible Magic to a total of 47 (out of 60) pages for opening MSJ briefs.

On the same token, Blue Spike used at least 30 pages to oppose the license motion (Dkt. 1730) and used at least 28 pages to oppose the indefiniteness motion (Dkt. 1785). With respect to Dkt. 1730, the local rules make clear that statements of disputed facts count towards the parties' page limits. Giving Blue Spike the benefit of the doubt that it could reformat its statement down to 6 pages (from the original 14), Blue Spike used at least 30 pages for Dkt. 1730 (the brief itself was 24 pages). It also appears that Dkt. 1785 is not properly double spaced. But giving Blue Spike the benefit of the doubt that it is, Blue Spike has used at least 58 out of its 60 pages for oppositions to MSJs.

Thus, the parties have two options: either Audible Magic can eventually file its MSJ brief using only 13 pages and Blue Spike would then have 2 pages to oppose, or the parties can stipulate to increase the page limits articulated in Rule 7(a)(3). Specifically, Audible Magic would propose the following adjustment:

Brief	New Total Pages
Opening MSJ	75
Opposition to MSJ	75
Reply to MSJ	30
Sur-Reply to MSJ	30

I raised this issue with Mr. Brasher last fall (see attached) but never received a response. Please let us know which option Blue Spike would like to pursue. If Blue Spike chooses to remain silent on this issue, we will assume that means that it is fine with the current limits and will file a 2 page opposition, consistent with the local rules.

Alyssa

<image001.gif><image002.gif> **ALYSSA CARIDIS**  
*Intellectual Property*  
Senior Associate

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<2014.09.02 [BS] SEALED Opposition to Audible Magic's MSJ.pdf>

<Exhibit A - Statement of Disputed Facts.pdf>

<2014.09.19 [1785] [BS] Opposition to MSJ of Invalidity.pdf>

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